



**[Billing Code: 6750-01-S]**

## **FEDERAL TRADE COMMISSION**

### **Agency Information Collection Activities; Proposed Collection; Comment Request**

**AGENCY:** Federal Trade Commission.

**ACTION:** Notice.

**SUMMARY:** The Federal Trade Commission (“FTC” or “Commission”) intends to conduct (with parental permission) an online survey of children, ages 8-16 years, who watch movies, listen to music, and/or play game applications (“apps”) on smartphones, Internet-accessible handheld devices, or tablet computers (collectively “app-capable mobile devices”) that run either the iOS or Android operating systems. Before gathering this information, the FTC is seeking public comments on its proposed consumer research. Comments will be considered before the FTC submits a request for Office of Management and Budget (“OMB”) review under the Paperwork Reduction Act (“PRA”).

**DATES:** Comments must be received on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the SUPPLEMENTARY INFORMATION section below.

**FOR FURTHER INFORMATION CONTACT:** Keith Fentonmiller, (202) 326-2775, Attorney, Federal Trade Commission, Bureau of Consumer Protection, Division of Advertising Practices, 600 Pennsylvania Ave., NW., Washington, DC 20580.

## SUPPLEMENTARY INFORMATION:

### Background

In September 2000, the Commission issued a report requested by the President and Congress entitled, *Marketing Violent Entertainment to Children: A Review of Self-Regulation and Industry Practices in the Motion Picture, Music Recording & Electronic Game Industries*.<sup>1</sup> The 2000 Report examined the structure and operation of each industry's self-regulatory program, parental familiarity with and use of those systems, and whether the industries had marketed violent entertainment products in a manner inconsistent with their own parental advisories. The Commission found that industry members routinely targeted children in their advertising and marketing of violent entertainment products and that children under age 17 could purchase these products relatively easily. The Commission called upon the industries to strengthen their self-regulatory programs by: (1) prohibiting target-marketing to children and imposing sanctions for violations; (2) improving self-regulatory programs at the retail level; and (3) increasing parental awareness of the ratings and labels.

The Commission issued follow-up reports to assess changes in industry practices in April 2001,<sup>2</sup> December 2001,<sup>3</sup> June 2002,<sup>4</sup> July 2004,<sup>5</sup> and April 2007.<sup>6</sup> Those reports found less

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<sup>1</sup> Available at <http://www.ftc.gov/reports/violence/vioreport.pdf> (hereafter "2000 Report").

<sup>2</sup> Available at <http://www.ftc.gov/reports/violence/violence010423.pdf>.

<sup>3</sup> Available at <http://www.ftc.gov/os/2001/12/violencereport1.pdf>.

<sup>4</sup> Available at <http://www.ftc.gov/reports/violence/mvecrpt0206.pdf>.

<sup>5</sup> Available at <http://www.ftc.gov/os/2004/07/040708kidsviolencrpt.pdf>.

<sup>6</sup> Available at <http://www.ftc.gov/reports/violence/070412MarketingViolentEChildren.pdf>.

marketing of violent R-rated films<sup>7</sup> and M-rated video games<sup>8</sup> to children, but little change in marketing practices for explicit-content music.<sup>9</sup> The latest report, issued in December 2009,<sup>10</sup> recommended that all three industries tighten restrictions on child-directed online and viral marketing of violent content, and improve their display of rating information in advertising and on packaging. The Commission further recommended that the movie and music industries develop specific and objective criteria to restrict the marketing of violent movies (both R- and PG-13-rated) and explicit-content music to children. Additionally, consumer research sponsored by the Commission showed that the movie industry needs to better inform parents about additional adult

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<sup>7</sup> The motion picture rating system is a joint venture between the Motion Picture Association of America (“MPAA”) and the National Association of Theatre Owners (“NATO”). The MPAA’s Classification and Ratings Administration (“CARA”) assigns one of five ratings to a movie: “G General Audiences,” “PG Parental Guidance Suggested,” “PG-13 Parents Strongly Cautioned,” “R Restricted,” or “NC-17 No One Under 17 Admitted.” See NATO, *The Movie Ratings System*, available at <http://www.natoonline.org/ratingsabout.htm>. Each film assigned a rating other than G also receives a brief explanation for the film’s rating, e.g., “Rated R for terror, violence and language,” or “Rated PG-13 for intense sci-fi violence, some sexuality and brief nudity.”

<sup>8</sup> The Entertainment Software Rating Board (ESRB) assigns computer and video games one of six rating symbols: EC (Early Childhood), E (Everyone), E10+ (Everyone 10 and older), T (Teen), M (Mature), or AO (Adults Only). See ESRB, *Game Ratings & Descriptor Guide*, available at [http://www.esrb.org/ratings/ratings\\_guide.jsp](http://www.esrb.org/ratings/ratings_guide.jsp). Titles rated AO (Adults Only) have content that should only be played by persons 18 years and older. Titles rated M (Mature) have content that may be suitable for persons ages 17 and older. Titles rated T (Teen) have content that may be suitable for ages 13 and older. In addition to the rating symbol, which suggests the age-appropriateness for the game, the ESRB assigns content descriptors that indicate elements in a game that may have triggered a particular rating and/or may be of interest or concern (e.g., “Intense Violence” or “Sexual Themes”).

<sup>9</sup> A record company may assign a Parental Advisory Label (“PAL”) to a recording to alert parents to explicit lyrics, and to provide notice to consumers that these recordings may contain strong language or references to violence, sex, or substance abuse. See Recording Industry Association of America, *Parental Advisory*, available at [http://riaa.org/toolsforparents.php?content\\_selector=parental\\_advisory](http://riaa.org/toolsforparents.php?content_selector=parental_advisory). The PAL indicates only that the recording contains explicit content. It does not inform consumers about the specific type of explicit content that triggered the PAL, although one company (Sony Music Entertainment) uses an enhanced PAL that provides such additional information (e.g., “Strong Language” or “Sexual Content”). The music industry has not defined the PAL to mean that an explicit-content recording is inappropriate for any particular age group. As a result, most retailers do not restrict the sale of explicit-content music to children. See 2009 Report, *infra* note 10, at App. A-1.

<sup>10</sup> Available at <http://www.ftc.gov/os/2009/12/P994511violententertainment.pdf> (hereafter “2009 Report”).

content in unrated DVDs based on films that were rated R for theaters. Finally, although there was improvement in retail enforcement of the entertainment ratings, the Commission noted that all three industries could do better.<sup>11</sup>

The 2009 Report also observed that consumers, including children under 17, were increasingly renting or buying movies to view on mobile devices such as Apple's iPod touch and iPhone.<sup>12</sup> At that time, Apple had just updated the parental control features on its iOS mobile platform to allow parents to limit downloadable movies based on the MPAA rating, music labeled as explicit, and apps based on Apple's age-based designations (e.g., "Rating 4+," "Rated 9+," "Rated 12+," "Rated 17+").<sup>13</sup> Some mobile carriers also provided – and continue to provide – their own mobile content ratings that parents may use to restrict access to apps, R-rated movies, or explicit-content music.<sup>14</sup> Although noting that these systems should assist parents in monitoring their children's consumption of mobile content, the Commission's 2009 Report expressed some concern

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<sup>11</sup> The results of the Commission's undercover shopper survey published in 2011 demonstrated further progress in ratings enforcement. See FTC, *FTC Undercover Shopper Survey on Enforcement of Entertainment Ratings Finds Compliance Worst for Retailers of Music CDs and the Highest Among Video Game Sellers* (Apr. 20, 2011), available at <http://www.ftc.gov/opa/2011/04/violentkidsent.shtm>. That survey found that 64% of underage shoppers were able to purchase explicit-content music CDs, down slightly from 2009. Movie theaters demonstrated no statistically significant change in ratings enforcement at the box office, whereas DVD retailers meaningfully improved their ratings enforcement with respect to R-rated DVDs and unrated DVDs based on movies that were rated R for theaters. Finally, 13% of underage shoppers were able to buy M-rated video games, a statistically significant improvement from the 20% purchase rate in 2009.

<sup>12</sup> 2009 Report, *supra* note 10, at 15.

<sup>13</sup> *Id.* at 29.

<sup>14</sup> *Id.* Compare [http://parentalcontrolcenter.com/#\\_self](http://parentalcontrolcenter.com/#_self) (for Verizon service; parental controls will not work when device is connected through WiFi); and [http://support.sprint.com/support/article/Learn\\_more\\_about\\_setting\\_Wireless\\_Web\\_Access\\_Parental\\_Controls/case-wh164052-20091229-155228?INTNAV=SU:SP:MVT](http://support.sprint.com/support/article/Learn_more_about_setting_Wireless_Web_Access_Parental_Controls/case-wh164052-20091229-155228?INTNAV=SU:SP:MVT) (for Sprint service; permits parents to restrict children's access to material that "is considered to be appropriate for all ages"); with <http://www.att.net/smartcontrols-WirelessParentalControls#none> (for AT&T service; parental controls will not work with smartphones, tablets, or devices in WiFi mode; content restrictions not age-based).

about potential consumer confusion over the proliferation of different mobile content rating systems.<sup>15</sup>

In December 2010, the Android Market (now known as Google Play) began requiring developers to rate the content of their mobile apps.<sup>16</sup> As a result, parents now may be able to restrict their children's access to Android-based apps according to four "maturity levels": Everyone, Low maturity, Medium maturity, and High maturity.<sup>17</sup> Further, in November 2011, CTIA-The Wireless Association and the ESRB announced a new rating system that six mobile application storefronts (AT&T, Microsoft, Sprint, T-Mobile USA, U.S. Cellular, and Verizon Wireless) agreed to support as part of their application submission (or onboarding) process.<sup>18</sup> Once this system is implemented, developers will submit a short, detailed questionnaire and instantly receive an age-based ESRB rating icon for their app that they will be able to use across participating mobile storefronts.

A recent Commission staff report observed that the market for apps playable on app-capable smartphones, tablet computers, and other Internet-accessible handheld devices (*e.g.*, the iPod Touch) has experienced explosive growth in the three years since the Commission's 2009 Report.<sup>19</sup> As of February 2012, there were more than 500,000 apps in the Apple App store and 380,000 apps in the Google Play marketplace. The report noted that young children and teens are increasingly

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<sup>15</sup> 2009 Report, *supra* note 10, at 29.

<sup>16</sup> <http://android-developers.blogspot.com/2010/11/content-rating-for-android-market.html> (accessed June 11, 2012).

<sup>17</sup> <http://support.google.com/googleplay/android-developer/bin/answer.py?hl=en&answer=188189> (accessed June 11, 2012); <http://support.google.com/googleplay/bin/answer.py?hl=en&answer=1075738&topic=245026> (accessed June 11, 2012).

<sup>18</sup> CTIA-The Wireless Association, *CTIA-The Wireless Association and ESRB Announce Mobile Application Rating System* (Nov. 29, 2011), available at <http://www.ctia.org/media/press/body.cfm/prid/2147>.

<sup>19</sup> FTC Staff Report, *Mobile Apps for Kids: Current Privacy Disclosures are Disappointing*, at 1 (Feb. 2012), available at [http://www.ftc.gov/os/2012/02/120216mobile\\_apps\\_kids.pdf](http://www.ftc.gov/os/2012/02/120216mobile_apps_kids.pdf).

embracing smartphone technology for entertainment and educational purposes. Further, a recent online survey conducted by the NPD Group showed that children ages 2 to 14 use a tablet, iPod Touch, or smartphone an average of five days a week (nearly an hour a day), and that these devices have an average of twelve apps.<sup>20</sup> Gaming is the most popular type of app, followed by listening to or downloading music. Although most of these apps are free, the top categories of purchased apps are gaming, education, and movies. An earlier NPD Group survey showed that children are spending an increasingly greater share of their money on downloadable content, mostly music and movies.<sup>21</sup>

Although children (like consumers generally) increasingly are purchasing or playing movies, music, and games on app-capable mobile devices, no commercially available data quantify children's consumption of mobile content that is rated or labeled as potentially inappropriate for them; assess whether and to what extent the various content rating systems impact their ability to purchase or play such content; or measure the content restrictions imposed by parents, including through technology-based parental control mechanisms. Accordingly, the Commission proposes to conduct (with parental permission) a survey of children ages 8-16 years who use the most common app-capable mobile devices – those that run the iOS or Android platforms.<sup>22</sup> The Commission

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<sup>20</sup> NPD Group, *An Average of 12 Downloaded Apps Are Currently on Mobile Devices Used by Kids* (May 22, 2012), available at [https://www.npd.com/wps/portal/npd/us/news/pressreleases/pr\\_120522](https://www.npd.com/wps/portal/npd/us/news/pressreleases/pr_120522); see also Anton Troianovski, Spencer Ante, & Jessica Vascellaro, *Mom, Please Feed My Apps!*, *The Wall Street Journal* (June 8, 2012), (“About 60% of children 8 to 11 years old interviewed recently by the research firm KidSay said that they used phone apps, up from 40% a year ago.”), available at <http://online.wsj.com/article/SB10001424052702303753904577452341745766920.html?KEYWORDS=feed+my+apps>.

<sup>21</sup> NPD Group, *Downloading Entertainment Content Is on the Rise with Kids* (Oct. 4, 2011), available at [https://www.npd.com/wps/portal/npd/us/news/pressreleases/pr\\_111004](https://www.npd.com/wps/portal/npd/us/news/pressreleases/pr_111004).

<sup>22</sup> As of April 2012, Google's Android and Apple's iOS mobile platforms were operating on more than 80% of all smartphones, and accounted for nine out of ten new smartphone sales during the fourth quarter of 2011. See comScore,

expects that the survey results will help inform its policy recommendations in its next report on the marketing of violent entertainment to children.

### **Applicability of Paperwork Reduction Act**

Under the PRA and implementing OMB regulations, federal agencies must obtain approval from OMB for each “collection of information” they conduct or sponsor if posed to ten or more entities within any twelve-month period. 44 U.S.C. 3502(3); 5 CFR 1320.3(c). “Collection of information” means agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. 44 U.S.C. 3501(3); 5 CFR 1320.3(c).

The staff anticipates conducting an online survey of 900 respondents drawn from a nationally representative pool. Thus, before the Commission can conduct the study, it must obtain OMB clearance. See 44 U.S.C. 3507(a), 3502(3).

### **Request for Comments**

The FTC invites comments on: (1) whether the proposed collections of information are necessary for the proper performance of the functions of the FTC, including whether the information will have practical utility; (2) the accuracy of the FTC’s estimate of the burden of the proposed collections of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of collecting information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. All comments should be filed as prescribed below, and must be

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*comScore Reports April 2012 U.S. Mobile Subscriber Market Share* (June 1, 2012), available at [http://www.comscore.com/Press\\_Events/Press\\_Releases/2012/6/comScore\\_Reports\\_April\\_2012\\_U.S.\\_Mobile\\_Subscrib](http://www.comscore.com/Press_Events/Press_Releases/2012/6/comScore_Reports_April_2012_U.S._Mobile_Subscrib)

received on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

Please also note that because your comment will be made public, you are solely responsible for ensuring that it does not include any sensitive personal information, such as any individual's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. It is also your own responsibility to ensure that your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. Your comment also should not include any "[t]rade secret or any commercial or financial information...which is privileged or confidential." *See* Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). No comment, whether it contains such material or not, will be given confidential treatment unless the comment has been filed with the FTC Secretary; the comment is accompanied by a written confidentiality request that complies fully with FTC Rule 4.9(c), 16 CFR 4.9(c); and the General Counsel, in his or her sole discretion, has determined to grant the request in accordance with applicable law and the public interest.

Because paper mail addressed to the FTC is subject to delay due to heightened security screening, please consider submitting your comment in electronic form. To ensure that the Commission considers an electronic comment, you must file it on the web-based form at the web link: <https://ftcpublic.commentworks.com/ftc/mobileappssurveypra>. If this Notice appears at <http://www.regulations.gov/search/index.jsp>, you may also file an electronic comment through that

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[er\\_Market\\_Share](#); NPD Group, *Apple Leads Mobile Handsets in Q4 2011, But Android Attracts More First-Time Smartphone Buyers* (Feb. 6, 2012), available at [https://www.npd.com/wps/portal/npd/us/news/pressreleases/pr\\_120206](https://www.npd.com/wps/portal/npd/us/news/pressreleases/pr_120206).



website. The Commission will consider all comments that regulations.gov forwards to it. You may also visit the FTC website at <http://www.ftc.gov> to read the Notice.

A comment filed in paper form should include the “Entertainment Industry Study: FTC File No. P994511” reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission, Office of the Secretary, Room H-113 (Annex J), 600 Pennsylvania Avenue, NW, Washington, DC 20580. The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives, whether filed in paper or electronic form. Comments received will be available to the public on the FTC website, to the extent practicable, at <http://www.ftc.gov/os/publiccomments.shtm>. As a matter of discretion, the Commission makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC website. More information, including routine uses permitted by the Privacy Act, may be found in the FTC’s privacy policy, at <http://www.ftc.gov/ftc/privacy.shtm>.

### **Description of the Collection of Information and Proposed Use**

With the assistance of a consumer research firm (hereafter “the Contractor”), the FTC will develop a draft questionnaire for use in an online survey of children ages 8-16 (with parental permission) drawn from a nationally representative pool. The panel will consist of 100 respondents

for each of the nine age groups between ages 8 and 16, inclusive (900 total respondents). The Contractor will screen the potential respondents for those who (a) own or have access to a mobile device (i.e., a smartphone, an Internet-accessible handheld device like an iPod Touch, or a tablet computer) that runs either the iOS or Android operating system and (b) either watch movies, listen to music, and/or play game apps on that device.

The study questionnaire will relate to the movies, music, and game apps that 8-16 year old children play on those devices, as well as the rating or labeling systems applicable to each of those media. The questionnaire will consist of a mixture of open-ended and closed-ended questions, and it is estimated to take 10 minutes to complete. The questions will focus on:

- awareness of movies, music, and game apps rated or labeled as potentially inappropriate for the user's age;
- awareness of parental controls on their devices that could prevent access to content rated or labeled as potentially inappropriate for the user's age;
- consumption of movies, music, and games apps rated or labeled as potentially inappropriate for the user's age;
- usage of rating or labeling systems when acquiring movie, music, or game app content;
- ability to bypass or modify parental controls for movies, music, or game app content;
- estimation of percentage of content on their personal device that is rated or labeled as potentially inappropriate for the user's age;
- estimation of percentage of time spent on content rated that is or labeled as

potentially inappropriate for the user's age, relative to all other content;

- estimation of dollars spent on content that is rated or labeled as potentially inappropriate for the user's age, relative to all other content; and
- restrictions, if any, that parents impose on their children's purchase or use of content that is rated or labeled as potentially inappropriate for the user's age

The results of the survey will be published in the FTC's next public report on the marketing of entertainment violence to children.

**Estimated Hours Burden: 267 Hours**

The Contractor conducting the consumer research will recruit a stratified sample of 900 children ages 8 to 16 (with parental permission) who watch movies, listen to music, and/or play game apps on mobile devices (*i.e.*, smartphones, Internet-accessible handheld devices like an iPod Touch, or tablet computers) that run either the iOS or Android operating system. The Contractor will use a screening (quota) methodology from an existing Internet panel, or respondents recruited using protocols utilizing probability sampling procedures or other commonly accepted sampling techniques. The FTC staff estimates that the screening questions should take respondents no more than 60 seconds to complete. The screening questions will be asked of approximately 7,000 respondents to provide a large enough random sample for the surveys. Cumulatively, screening should require a maximum of 117 hours (7,000 total respondents x 1 minute for each). After completing the screener, answering the surveys will impose a burden per respondent of approximately 10 minutes, totaling 150 hours for all respondents to the surveys (900 respondents x 10 minutes per survey). Thus, the total hours burden attributable to the consumer research is approximately 267 hours (117 hours for the screener + 150 hours for the survey).

**Estimated Cost Burden: \$0**

The cost per respondent should be negligible. Participation is voluntary, and will not require any labor expenditures by respondents. There are no capital, start-up, operation, maintenance, or other similar costs to the respondents.

By direction of the Commission.

Donald S. Clark  
Secretary.

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